

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 96-235-W/S - ORDER NO. 97-95

FEBRUARY 5, 1997

IN RE: Application of Carolina Water Service, ) ORDER DENYING  
Inc. for Approval of a Transfer of the ) PETITION FOR  
I-20 and Lake Murray Systems to the ) REHEARING OR  
Town of Lexington, South Carolina. ) RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the "Commission") on the Petition for Rehearing or Reconsideration (the "Petition") filed by Carolina Water Service, Inc. ("CWS" or the "Company"). By its Petition, CWS requests that the Commission rehear the issues from the proceedings of the instant Docket or to reconsider Commission Order No. 96-859, dated December 13, 1996. In Order No. 96-859, the Commission declined to issue a certificate that the proposed sale by CWS of its facilities in the Company's I-20 and Lake Murray service areas to the Town of Lexington ("Town") was in the public interest. CWS's Petition was filed pursuant to S.C. Code Ann. §58-5-330 (1976) and 26 S.C. Code Ann. Regs. 103-881 (Supp. 1996).

As stated in Order No. 96-859, the question before the Commission in this case was "whether the sale of the CWS water distribution and wastewater collection systems, and associated property, in the Company's I-20 and Lake Murray subdivisions is 'in the public interest'." Order No. 96-859 at 4. In Order

96-859, the Commission noted "several areas of concern" based on the evidence of record which led the Commission to conclude that "the Company did not meet its burden of proof in establishing that the transfer is 'in the public interest'." Order No. 96-859 at 8. By its Petition, CWS asserts that the Commission's concerns, as noted in Order 96-859, "can be justified only by an exaggeration of the evidence which produced those 'concerns' or by a failure to acknowledge other evidence or legal authority which would eliminate the issues as 'concerns'." Petition at 2.

As noted in Order No. 96-859, CWS as the Applicant in this proceeding had the burden of proof to demonstrate to the Commission that the transfer was "in the public interest." Order No. 96-859 at 8. The Commission concluded that, based on the record before it, CWS did not meet its burden of proof in establishing that the transfer was "in the public interest," and therefore, the Commission withheld the issuance of a certificate that the sale was in the public interest. Order No. 96-859 at 8.

The South Carolina Supreme Court has held that "the Commission sits as the trier of facts, akin to a jury of experts." Hamm v. South Carolina Public Service Commission, 309 S.C. 282, 422 S.E.2d 110 (1992). The Commission is very aware that what constitutes the "public interest" does not appear in the statutes and regulations. Furthermore, the Commission realizes that "public interest" is a dynamic concept which depends upon the facts and circumstances of each particular case.

While South Carolina cases do not define "public interest" as

it is to be applied in the context of the instant case, the Commission, in looking at other jurisdictions, recognizes that property becomes "clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large." Wisconsin Power and Light Company v. Public Service Commission of Wisconsin, 148 Wis.2d 881, 891, 437 N.W.2d 888, 892 (1989). When a Company devotes its property to a use in which the public has an interest, it in effect grants to the public an interest in that use and must submit to being controlled by the public for the common good. Id. at 891, 437 N.W.2d at 892. The public interest has been held to be a matter of policy to be determined by a Public Service Commission. Public Water Supply District v. Public Service Commission, 600 S.W.2d 147, 155 (Missouri, 1980). See also Crescent Estates Water Company, Inc. v. Public Service Commission, 159 A.D.2d 765, 551 N.Y.S.2d 987 (1990). Further, the right to contract is not absolute; it is subject to the state's police powers, which may be exercised (by the Commission) for the protection of the public's health, safety, morals or general welfare. Anchor Point v. Shoals Sewer Company and the Public Service Commission of South Carolina, 308 S.C. 422, \_\_\_, 418 S.E.2d 546, 550 (1992). Also, transactions involving a public utility affect a public interest. 418 S.E.2d at 550.

The record of this matter shows that the public, as evidenced by the testimony from the customers, is opposed to the transfer. The "concerns" noted by the Commission in Order No. 96-859 were raised by witnesses testifying during the proceeding or by parties

to the proceeding and are present in the record. In weighing the evidence in the record, the Commission, as the trier of fact, could certainly consider and base its decision on those "concerns" and considerations noted in Order No. 96-859. The totality of the record, with the opposition from the public, clearly supports the Commission's determination that the transfer was not "in the public interest." The Commission finds no error in mentioning its "concerns" in Order No. 96-859.

By its Petition, CWS first takes exception to the Commission's "concern," as raised by the customers during the hearing, that "the customers in the I-20 and Lake Murray service areas would not have representation in rate setting matters" if the transfer was completed. Order 96-859 at 8. CWS argues that the Commission's reasoning and reliance on this point is misplaced as CWS asserts that the affected customers would continue to have opportunities and forums in which to express their concerns, ostensibly before town council pursuant to the Town's procedures which provide for notice and for public hearings prior to readings of proposed ordinances by which rates would be adopted. Petition at 3 and 4. Further, CWS submits that since the General Assembly has authorized municipalities to extend their utility systems in order to serve customers outside municipal limits, the Commission's reasoning in Order 96-859 implies that the General Assembly has created a situation which is contrary to the public interest. Petition at 3 and 4.

The Commission finds no error on this point. Testimony from

the customers shows genuine concern regarding a lack of representation on town council. As evidence of record, the Commission may consider the customers' concern and give it what weight the Commission, as the trier of fact, determines. Further, the Commission does not believe that its "concern" regarding customer representation, or lack thereof, on town council creates a situation which is contrary to the public interest. The Commission, by Order No. 96-859, is not preventing the Town from extending its line beyond its corporate limits, nor is the Commission saying that it is against the public interest for the Town to extend its lines. However, Order 96-859 does say that based on the Commission's examination of the record in this proceeding, the Commission has determined that CWS has not proved to the Commission that the proposed transfer of these systems is "in the public interest." Order No. 96-859 at 8.

Secondly, CWS takes exception to the "Commission's 'concern' that the customers of the Systems, as customers of the Town, might face 'higher bills' as a consequence of the transfer, and that there was an 'uncertainty' about future rate changes after the Town's voluntary 18-month 'freeze' of the existing rate levels." Petition at 4. This "concern" is clearly contained in the record of the proceeding. While the Town stated that it would voluntarily "freeze" rates at existing levels for a period of twelve to eighteen months, customers testified at the hearing that they would pay more under the Town of Lexington's out-of-town rates than they are currently paying for service from CWS.

Further, and as the Commission observed in Order No. 96-859 at p. 5, neither the Town nor CWS submitted or even conducted either a rate study or feasibility study with regard to the I-20 and Lake Murray service areas. Such a study could have supported the Town's assertions that a reduction in rates was possible in the future.

As the Applicant in this proceeding, CWS had the burden to prove that the proposed transfer was "in the public interest." In weighing the evidence of record, the Commission determined that CWS did not meet its burden of proof. In making its determination, the Commission was justified in relying on the evidence presented and was also warranted in commenting on what was not presented. The Commission therefore finds no error in its determination.

Next, CWS takes exception with the Commission noting a concern with respect to the effect of the transfer on the customer base remaining with the Company after the transfer. Petition at 5. CWS argues in its Petition that "the Commission need be 'concerned' about such post-transfer effects only to the extent that the Commission would abandon its regulatory responsibility." Petition at 5. The Commission is well aware that it would continue to exercise regulatory authority over CWS, and its remaining customer base, if the transfer had been approved. However, there is no error in the Commission commenting in Order No. 96-859 regarding the failure of CWS to make a showing as to the effect of the transfer on the remaining customer base. In

making a determination of "in the public interest," the Commission finds no error in considering the customers who would remain with CWS after the transfer just as the Commission would consider those customers who were the subject of the transfer.

Finally, CWS contends that the Commission failed to address a beneficial result of the transfer which according to CWS "offsets" the "concerns" of the Commission expressed in Order No. 96-859. CWS submits that the transfer would result in a surface water supply of nearly inexhaustible quantity which would eliminate complaints of quality of water service historically expressed by the customers. Petition at 6. While CWS and the Town would hope that the Town's service using the surface water supply would improve the quality of service, it is speculative at best for CWS to state categorically that "the Town's service to these customers would eliminate the complaints which they have historically expressed." Petition at 6. As the trier of fact, the Commission makes the determination as to the weight of any evidence presented. Only the Commission could state that a particular piece of evidence could "offset" other concerns of the Commission. Clearly, in the case before the Commission, the Commission in weighing the evidence did not find that the prospect of improved quality of water or service outweighed the other aspects mentioned in Order No. 96-859. Therefore, the Commission discerns no error in its Order No. 96-859.

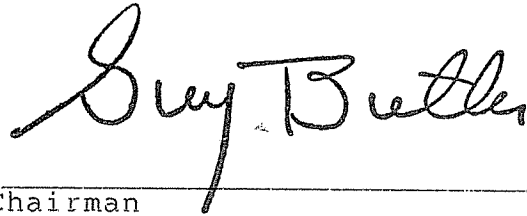
Based on the reasoning as set forth above, the Petition of CWS is denied.

IT IS THEREFORE ORDERED THAT:


1. The Petition for Rehearing or Reconsideration filed by CWS requesting rehearing or reconsideration of the issues in Commission Order No. 96-859 is denied.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Deputy Executive Director

(SEAL)